

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLA Y. COLEMAN and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, AR

*Docket No. 98-2199; Submitted on the Record;
Issued February 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury to her lower back in the performance of duty.

On January 24, 1997 appellant, then a 28-year-old manual clerk, filed a claim for compensation (Form Ca-2) alleging that she developed low back pain as a result of standing and reaching for prolonged periods of time while in the performance of duty.

By letter dated February 24, 1997, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information in support of her claim, including a comprehensive medical report from her treating physician. In response, appellant submitted a narrative statement detailing her employment duties and explaining the onset of her pain. She stated that she first noticed her low back pain in July 1996 and that by December 1996 her pain had progressed to the point where she sought medical treatment. The only medical report submitted by appellant is a Form CA-17 medical report dated December 30, 1996 from a physician whose signature is illegible. In this report, the physician lists "low back pain" in the space allotted for a diagnosis and answers "no" to the question as to whether the condition is related to appellant's employment.

In a decision dated March 24, 1997, the Office denied appellant's claim on the grounds that the December 30, 1996 medical report did not provide a diagnosis, but rather listed the symptom of low back pain and thus was insufficient to establish that appellant sustained an injury, as alleged.

Appellant requested a review of the written record but did not submit any additional medical evidence in support of her claim. The hearing representative, in a decision issued on August 27, 1997, affirmed the Office's March 24, 1997 decision, on the grounds that the record contained no medical evidence sufficient to establish that appellant had sustained a compensable injury in the performance of duty.

Appellant then filed a request for reconsideration and submitted an April 9, 1997 medical report from Dr. Carla A. Anderson, a diagnostic radiologist and treating physician, in support of her request. In her report, Dr. Anderson stated that appellant has “back pain with myofascial pain ... ongoing since September 1996, which I believe is secondary to her prolonged standing, twisting, lifting and the other positional efforts needed in her job description.” In a decision dated November 12, 1997, the Office determined that this report was insufficient to warrant a modification of its prior decision because it failed to give an objective diagnosis, but instead only listed appellant’s subjective complaints of pain.

On December 16, 1997 appellant again requested reconsideration of the prior decision and submitted a December 4, 1997 medical report from Dr. Anderson in support of her request. In her report, Dr. Anderson states, in pertinent part:

“To clarify the diagnosis of the condition described April 9, 1997, I have reviewed our neurosurgical report. [Appellant] has mechanical/myofascial low back pain, possibly related to abnormal lumbar segmentation. This is the opinion of Dr. Steven Cathey.”

In a decision dated March 23, 1998, the Office found the newly submitted medical evidence to be speculative and cumulative and therefore insufficient to warrant merit review of its prior decision.

The Board notes that in its March 23, 1998 decision, the Office conducted a merit review of appellant’s claim.

In its March 23, 1998 decision, the Office found that the December 4, 1997 report of Dr. Anderson was insufficient to warrant merit review of its prior decision. The Board finds, however, that the context of the March 23, 1998 decision and accompanying memorandum indicate that the Office in fact considered the merits of the claim in the decision. For example, the memorandum accompanying the March 23, 1998 decision specifically weighed the probative value of Dr. Anderson’s report and found it speculative and, therefore, of no probative value. This is not the proper standard for determining whether a case should be reopened for merit review¹ but instead is the standard to be used when conducting a merit review. Therefore, the Board finds that in its March 23, 1998 decision, the Office exercised its discretionary authority under 5 U.S.C. § 8128 to reopen appellant’s claim for further merit review.

As the Board finds that the Office’s March 23, 1998 decision constituted a decision on the merits and as appellant, in a letter postmarked June 27, 1998, appealed to the Board within one year of the decision dated March 23, 1998, the Board will consider the merits of appellant’s claim.

The Board finds that appellant has not sustained her burden of proof to establish that she was injured in the performance of duty.

¹ The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. *Kenneth R. Mroczkowski*, 40 ECAB 855, 858-59 (1989).

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

As noted above, in support of her claim appellant submitted narrative medical reports from Dr. Anderson, dated April 9 and December 4, 1997. In her initial report, she stated that appellant had back pain with myofascial pain, secondary to the positional requirement of her job. This medical report is insufficient to establish appellant's burden because Dr. Anderson failed to indicate a diagnosis, but instead only listed appellant's back pain, which is a subjective symptom, rather than an objective diagnosis.⁶ Her addendum to this report is also insufficient to meet appellant's burden of proof in that the physicians' statement, that appellant's mechanical or myofascial pain was "possibly" related to abnormal lumbar segmentation, is too speculative to support appellant's claim. Therefore, appellant has failed to meet her burden to establish that she sustained an injury in the performance of duty, as alleged.

The decision of the Office of Workers' Compensation Programs dated March 23, 1998, November 12 and August 27, 1997, are affirmed as modified.⁷

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁴ The Office regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift, whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *See Val D. Wynn*, 40 ECAB 666 (1989).

⁷ The Board notes that on appeal, appellant submitted a May 6, 1998 report from Dr. Anderson. The Board cannot consider the evidence submitted by appellant on appeal inasmuch as the Board's jurisdiction is limited to the evidence of record which was before the Office at the time of its final decision. *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c).

Dated, Washington, D.C.
February 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member